(6)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
(C.G.)

W.P. No. 2293 /2002

PETITIONERS

1. Kelo Vihar,
Shashkiya Karmachari
Griha Nirman
Sahkari Sanstha
Maryadit, Raigarh (C.G.)
Registration No. 869/93
Through its President
Santosh Kumar Chandra
C/o Shri R.P. Chandra
aged about 37 years
R/o Kelo Vihar Colony
Raigarh (C.G.)

2. Ramchandra Kaluram Chaube
aged about 63 years,
S/o K.R. Choube,
Qr. No. 30/2400,
Kelo Vihar Colony,
Raigarh (C.G.)

3. Hemchandra Choudhary
aged about 51 years,
S/o K.S. Choudhary,
Qr. No. 37/1500,
Kelo Vihar,
Raigarh (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh,
Through The Collector,
Raigarh (C.G.)

2. Principal Secretary,
Department of Revenue,
Government of
Chhattisgarh, DKS Bhawan,
Mantralaya, Raipur (C.G.)

P.R. No. 2264/02
Presented by Shri Surendra Dubey
dated 21.10.02

शपथ आयुक्त,
24/94

Received copy
21/10/2002
INCHARGE
Constitution Cases Section
Office of the Advocate General
State of Chhattisgarh
BILASPUR

(7)

3. Municipal Committee,
   Raigarh, Through
   Commissioner.

4. Nazul Officer,
   Raigarh (C.G.)

5. Commissioner,
   Bilaspur Division,
   Bilaspur (C.G.)

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRITS OF CERTIORARI AND MANDAMUS ETC. WITH OTHER WRITS AND DIRECTIONS: -

(43R)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM : Hon'ble Shri H.L. Dattu, CJ
& Hon'ble Shri V.K. Shrivastava, J.

WRIT PETITION NO. 2293 OF 2002

Petitioner : Kelo Vihar and two others

Versus

Respondents : State of Chhattisgarh and four others

Present : Shri Kanak Tiwari, Sr. Advocate with Shri Prashant Mishra, Advocate for the petitioners.

Shri N.K. Agrawal, Dy. Advocate General for the State of Chhattisgarh/respondents No.1,2,4 and 5.

Shri V.R. Tiwari, Advocate for respondent No.3

Shri Ashish Shrivastava, Advocate for the intervener

ORAL ORDER
(Passed on 15TH of February 2007)

The following oral order of the Court was passed by

H.L. Dattu, CJ:

First petitioner is a Society. It is registered under the provisions of the Madhya Pradesh (now Chhattisgarh) Cooperative Societies Act, 1960 ('Act' for short).

(2) The petitioner Society in this petition filed under Article 226 and 227 of the Constitution of India, is seeking a writ in the nature of certiorari, to quash the orders/ reminder letters of the respondent – State vide No.K/N.O.R./2002/6281, dated 18th July,2002 and vide No. K/N.O.R./2002/7675 dated 13th September, 2002, on the ground that the

same is arbitrary, discriminatory and actuated due to mala fides etc. There is yet another prayer sought for by the petitioner Society, but that prayer is not pressed at the time of hearing of this writ petition by the learned Senior Counsel.

(3) Learned Senior Counsel would submit that the impugned demands made by the Collector, pursuant to the orders and directions issued by the State Government are in violation of the principles of natural justice. Elaborating this contention the learned Senior Counsel would submit that before fixing the premium, ground rental etc. the State Government ought to have afforded an opportunity of hearing to the petitioner Society, since that has not been done, according to the learned Senior Counsel, same is in violation of the principles of natural of justice, arbitrary, capricious etc.

(4) *Per contra*, learned Deputy Advocate General sought to justify the impugned orders/ letters of the Collector. Other learned counsels appearing for the other parties also sought to justify the impugned orders/ letters issued by the Collector.

(5) The only issue that would arise for our consideration is whether the demands made by the Collector pursuant to the order passed by the State Government are justiciable ?

(6) A perusal of the letter of the Collector would clearly demonstrate that before issuing the order, the State Government had not afforded an opportunity of hearing. In our view, before fixing the premium, annual rentals etc. the aggrieved party should have been afforded an opportunity of hearing and since that has not been done in the instant case, we are of the opinion that the demands made by the Collector pursuant to the order passed by the State Government are in violations of the principles of natural justice and therefore, such demands cannot be sustained by us.

Accordingly, they require to be quashed and the matter requires to be remanded to the State Government to re-determine the amounts payable by the petitioner Society in accordance with law, after affording an opportunity of hearing to the petitioner Society. Accordingly, the following:

Order

(i) The second prayer sought for by the petitioner Society in the petition is rejected, since it is not pressed before us.

(ii) The letters/demands issued by the Collector pursuant to the letter of the State Government are quashed. The matter is remitted back to the State Government to redo the matter in accordance with the law after affording an opportunity of hearing to the petitioner Society.

(iii) All the contentions of both the parties are left open.

(iv) Till such exercise is done by the State Government, both the parties will maintain the status quo as on today.

(v) Ordered accordingly.

Sd/-
V.K. Shrivastava
Judge

Sd/-
Chief Justice